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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,240	06/24/2003	Stephen P. Hershey	064749.0162	5628
45507	7590	06/26/2007		
BAKER BOTTS LLP 2001 ROSS AVENUE 6TH FLOOR DALLAS, TX 75201-2980			EXAMINER PEZZLO, JOHN	
			ART UNIT 2616	PAPER NUMBER
			NOTIFICATION DATE 06/26/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOmail3@bakerbotts.com
PTOmail4@bakerbotts.com

5

Office Action Summary	Application No.	Applicant(s)	
	10/603,240	HERSHEY ET AL.	
	Examiner	Art Unit	
	John Pezzlo	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-71 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 71 is/are allowed.
- 6) ☒ Claim(s) 1, 12, 13, 19-21, 24, 35, 36, 42-44, 47, 58, 59, 65-67 and 70 is/are rejected.
- 7) ☒ Claim(s) 2-11, 14-18, 22, 23, 25-34, 37-41, 45, 46, 48-57, 60-64, 68 and 69 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/24/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/10/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

Claims 1, 24, and 47 are objected to because of the following informalities: Claim 1, line 1, claim 24, line 2, and claim 47, line 2, utilize the phrase "capable of" which renders the indefinite. (The examiner suggests deleting the phrase.) Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 47 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 47 needs to be amended, the examiner suggests inserting after "executed" in line 5, -- by a computer --.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

Art Unit: 2616

patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

I. Claims 1, 12, 13, 19, 20, 21, 24, 35, 36, 42, 43, 44, 47, 58, 59, 65, 66, 67, and 70 are rejected under 35 U.S.C. 102(e) as being anticipated by Fitton et al. (WO 03/021886 A2) hereinafter Fitton.

1. Regarding claims 1, 24, 47, and 70 – Fitton discloses a memory for storing values for one or more node variables for the first node, and one or more components collectively operable to: spontaneously and independent of a centralized controller associated with the network, transmit a probe message to one or more other nodes in the plurality of distributed nodes for purposes of forming or reforming a network, receive a probe message from a second node, the probe message comprising values for the one or more node variables for the second node; compare the values for the one or more node variables for the first node to the values for the one or more node variables for the second node within the probe message to determine, independent of a centralized controller associated with the network, whether the first node should set itself to a new channel, and if it is determined that the first node should set itself to the new channel, set the first node to the new channel, refer to Figures 2 and 4 pages 1 and 2 and 7 and claim 1.

2. Regarding claims 12, 13, 35, 36, and 58, 59 – Fitton discloses if it is determined that the first node should not set itself to the new channel, discard the probe message received from the second node and if the first node currently has a home channel and it is determined that the first

Art Unit: 2616

node should not set itself to the new channel, then the first node remains on its home channel, refer to Figures 2 and 4 pages 1 and 2 and 7.

3. Regarding claims 19, 20, 42, 43, and 65, 66 – Fitton discloses a wireless ad-hoc network, the first node comprising a channel-agile mobile terminal within the wireless ad-hoc network and a wireless infrastructure network, the first node comprising either a mobile station or a base station within the wireless infrastructure network, refer to Figures 1, 2 and 4 pages 1 and 2 and 7.

4. Regarding claims 21, 44, and 67 – Fitton discloses determine one or more channels available to be scanned for purposes of forming or reforming a network; and order the available channels for purposes of, if the available channel is determined to be usable, spontaneously transmitting one or more probe messages to one or more other nodes on the available channel, refer to Figures 2 and 4 pages 1 and 2 and 7 and claim 1.

Allowable Subject Matter

Claim 71 is allowable over the prior art of record.

Claims 2-11, 14-18, 22, 23, 25-34, 37-41, 45, 46, 48-57, 60-64, and 68, 69 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. Heinonen (US 6,990,316 B2) discloses a short range RF network configuration.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pezzlo whose telephone number is (571) 272-3090. The examiner can normally be reached on Monday to Friday from 8:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin, can be reached on (571) 272-3134. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C.

or faxed to:

(571) 273-8300

For informal or draft communications, please label "PROPOSED" or "DRAFT"

Hand delivered responses should be brought to:

Jefferson Building

Application/Control Number: 10/603,240
Art Unit: 2616

Page 6


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John Pezzlo

14 June 2007



JOHN PEZZLO
PRIMARY EXAMINER